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In the Supreme Court of the United States

OCTOBER TERM, 1971

WATSON CHAPEL SCHOOL DISTRICT NO. 24, ET AL.,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. The United States commenced this school desegregation suit on July 9, 1970, against the Cotton Plant School District No. 1 and six other school districts in the Eastern District of Arkansas, including Watson Chapel School District No. 24, pursuant to Section 407 of the Civil Rights Act of 1964, 42 U.S.C. 2000c-6, and the Fourteenth Amendment to the Constitution. On August 11, 1970, the district court found that the Watson Chapel School District, which at that

time consisted of six schools, each attended almost exclusively by students of one race, was a dual school system (Pet. App. 23).[1]

After additional hearings the district court, on November 17, 1970, found that none of the four plans submitted by the school district would disestablish the dual school system and directed the implementation of an alternate HEW plan by the commencement of the second semester of the 1970-71 school year (January 18, 1971) (Pet. App. 24-25, 31).

Upon the school district's failure to comply with the court's order of November 17, 1970, the district court on February 5, 1971, found the school board members and the superintendent in civil contempt and imposed conditional sanctions upon them until they complied with the court's desegregation order of November 17, 1970 (Pet. App. 31). The superintendent of the school district promptly filed a report with the court indicating that substantial steps had been taken to implement the court's order of November 17, 1970, and, on the basis of this report, the court entered an order on February 12, 1971, relieving the school board members and the superintendent of penalties (Pet. App. 31-32).

At the civil contempt hearing on February 5, 1971, the court further directed counsel for the school dis-

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[1] The court found that a proposed desegregation plan submitted by the Department of Health, Education and Welfare on July 31, 1970, would completely desegregate the district, but granted the school board "an opportunity to develop a plan of their own to meet constitutional requirements" (Pet. App. 23).

trict, petitioner Warnock, to refrain from issuing public statements or in any other manner aiding in organizing resistance to the order of the court requiring implementation of a plan of desegregation. After a hearing on March 30, 1971, the court found that Warnock had "knowingly, willfully and wantonly obstructed the implementation" of the court's order, adjudged him in civil contempt and ordered that unless he certified in writing to the court that he would refrain from taking action to obstruct the orderly implementation of the orders of the court, sanctions would be imposed (Pet. App. 32-34). On April 2, 1971, Mr. Warnock filed a certificate stating that he would comply with the court's orders (Pet. App. 34), and, on April 6, 1971, the district court directed that he be relieved of the penalties imposed by its earlier order. On June 24, 1971, the court rescinded its order of February 5, 1971, and lifted all restrictions on Warnock (Pet. App. 42).

The court of appeals affirmed the district court's order requiring implementation of the HEW desegregation plan and dismissed as moot the appeals from the district court's orders holding the school officials and petitioner Warnock in contempt (Pet. App. 21-35).[2]

2.(a). Since the Watson Chapel school district had been operating as a dual school system, petitioners had a constitutional obligation to bring about "[t]he transition to a unitary, nonracial system of public education." *Green* v. *County School Board*, 391 U.S.

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[2] All three appeals were consolidated.

430. See *United States* v. *Jefferson County Board of Education*, 380 F.2d 385 (C.A. 5) (*en banc*), certiorari denied *sub nom. Caddo Parrish School Board* v. *United States*, 389 U.S. 840. The court of appeals correctly affirmed the district court's refusal to adopt any of the school district's plans since none of these held promise for the prompt conversion from a dual to a unitary system. *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19; *Clark* v. *Board of Education of Little Rock School District*, 426 F.2d 1035 (C.A. 8). The HEW proposal was educationally sound and administratively feasible, and would accomplish the desegregation of the school district (Pet. App. 25, 28). The district court therefore properly ordered implementation of that plan, as the court of appeals held. *Swann* v. *Charlotte-Mecklenburg*, 402 U.S. 1; *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290, 291 (Harlan, J., concurring); *United States* v. *Hinds County School Board*, 423 F.2d 1264 (C.A. 5).[3]

(b). The court of appeals correctly dismissed as moot the appeal of the superintendent and the mem-

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[3] Petitioners argue that the district court ordered the school board "to buy buses under Title I Funds and at the same time to violate the Whitten Amendment to the HEW appropriation bill" (Pet. 8). The orders of the district court did not require the use of Title I funds or any other funds, but rather provided that the district superintendent should collaborate with the Arkansas State Department of Education to redraw the "existing bus routes and develop procedures and policies to insure the transportation of all other eligible pupils on a non-segregated and otherwise non-discriminatory basis" (Pet. App. 26-27).

bers of the school board and the appeal of J. N. Warnock, attorney for the school board, from the district court's separate orders finding them in civil contempt. Petitioners filed certificates with the district court stating that they would comply with all of its outstanding orders. Since petitioners had thereby purged themselves and since the sanctions accordingly had been lifted,[4] questions regarding the propriety of originally imposing the sanctions were moot, and, as to these petitioners, the court of appeals correctly held that there was no justiciable issue before it. See *Federal Trade Commission* v. *Stroiman*, 428 F.2d 808 (C.A. 8); *Taylor* v. *United States*, 410 F.2d 392 (C.A. 5); *Murrell* v. *United States*, 253 F.2d 267 (C.A. 5), certiorari denied, 358 U.S. 841; *Kelley* v. *United States*, 199 F.2d 265 (C.A. 4).[5]

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[4] As indicated in the petition, the district court, by order of June 24, 1971, lifted all restrictions imposed upon petitioner Warnock (Pet. 17; Pet. App. 42).

[5] In any event, the district court's contempt orders were warranted and proper. See *Kasper* v. *Brittain*, 245 F.2d 92 (C.A. 6), certiorari denied, 355 U.S. 834; *Plaquemines Parish School Board* v. *United States*, 415 F.2d 817, 834-35 (C.A. 5); *In re Oliver*, 308 F. Supp. 1183, 1185 (N.D. Ill.).

It is respectfully submitted that the petition for a writ of certiorari should therefore be denied.

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